89-1086

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner

V.

GEORGE H. KLUMPNER

Respondent

ON WRIT OF CERTIORARI FROM THE
ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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68(9)

QUESTION PRESENTED FOR REVIEW

Whether the Illinois appellate courts violated the Full Faith and Credit clause of the United States Constitution by refusing to register a Minnesota money judgment rendered by a Minnesota court of general jurisdiction which had personal jurisdiction over the judgment debtor.

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SARAH KLUMPNER, a minor, by
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Petitioner

V.

GEORGE H. KLUMPNER

Respondent

PETITION FOR WRIT OF CERTIORARI

Sarah Klumpner, a minor, by Richard Kahn, her guardian ad litem, petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court.

OPINIONS BELOW

Petitioner's Minnesota judgment was registered and docketed in the Cook County,

Illinois Circuit Court on April 9, 1986.

On June 4, 1987, the Cook County, Illinois, Circuit Court denied the respondent's motion to vacate the registration of the judgment. The decision of the Cook County Circuit Court is not reported and is shown at Appendix A-4.

On March 31, 1989, the Appellate Court of Illinois, Fifth Division, reversed the decision of the Cook County Circuit Court, holding that petitioner's Minnesota money judgment could not be registered in Illinois. The decision of the Appellate Court of Illinois is reported at 182 Ill. App. 3rd 22 and 537 N.E.2d 914 (1988), and is shown at Appendix A-2.

On May 11, 1989, the Illinois Appellate Court denied a petition for rehearing. The order denying rehearing is shown at Appendix A-3.

On October 5, 1987, the Illinois Supreme Court denied a Petition for Leave to Appeal. The order is not reported and is shown at Appendix A-1.

JURISDICTION

Sarah Klumpner, a minor, by Richard Kahn, her guardian ad litem, petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court denying registration in Illinois of a money judgment rendered in a tort action against the respondent by a Minnesota court of competent and general jurisdiction. It is the contention of the Petitioner that the decision of the Illinois Supreme Court violated the Full Faith and Credit clause of the United States Constitution.

The order and opinion of the Illinois Appellate Court in favor of the respondent was entered on March 31, 1989. A Petition

for Leave to Appeal to the Illinois Supreme Court was denied on October 5, 1989. Jurisdiction of this Court rests on 28 U.S.C., Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article IV, Section 1 of the United States Constitution provides that:

> Full Faith and Credit shall be given in each state to the Public Acts, Record, and Judicial Proceeding of every other state and the Congress may by general laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

2. Title 28, United States Code, Section 1738, provides in pertinent part as follows:

> The records and judicial proceedings of any court of any...State, territory or Possession, or copies thereof...shall have the same full faith and credit in every court within the United States and its Territories and

> Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

3. Section 260.111 of the Minnesota Statutes provides in pertinent part that:

> ...the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be...neglected...or dependent....

4. Section 484.01 of the Minnesota Statutes provides that:

> The district courts shall have original jurisdiction in all civil cases within their respective districts....

5. Chapter 40, paragraph 2108(a) of the Illinois Statutes reads as follows:

> (a) A court which has jurisdiction under this Act to make an initial or modification judgment may decline to exercise its jurisdiction any time before making a judgment if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

STATEMENT OF THE CASE

This is a petition to review the Illinois Appellate Court's vacation of an Illinois foreign judgment registration of a $325,000 Minnesota tort money judgment awarded an infant plaintiff in a Minnesota action against her father for sexual abuse.

The sole question in this case is whether the Illinois courts are required by the Constitution to give full faith and credit to a money judgment rendered by a Minnesota court of general jurisdiction which had personal jurisdiction over the judgment debtor.[1]

The factual background to the case is as follows: Custody of the infant, Sarah, had been awarded to the mother, Judith, during

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[1]The defendant has not contended that the Minnesota court lacked personal jurisdiction over him, nor has he contended that there was fraud in the procurement of the judgment. Appendix A-4, pp. 47, 51-52.

the pendency of a Illinois divorce proceeding instituted by Judith in an Illinois Family Court while both she, and her husband, George, were Illinois residents.

In 1980, while the divorce proceedings were still pending in Illinois, the mother fled with the child to Minnesota in a good faith belief, as determined by the Illinois court that George would harm both her and the child. The mother and child then became Minnesota residents.

Supervisory restrictions which had been imposed on George's visitation rights by Judge Brady of the Lake County Illinois Circuit Court on September 26, 1980, were lifted by Judge Alfonse Witt of the same court on September 2, 1981. Following complaints of the infant that she had been sexually molested by George, observations of the mother to the same effect, and the

opinion of a treating Minnesota psychiatrist who was an expert in child abuse cases, the mother commenced a proceeding in the Minnesota Family Court in October 1981 for the elimination of George's visitation rights. On February 2, 1981, the Minnesota Family Court held that both it and the Illinois Family court had concurrent jurisdiction, but the mother was required to proceed in Illinois on the basis that the Illinois court had primary jurisdiction. See Appendix B-1. The mother's petition for appellate Minnesota review was denied.

On April 4, 1982, Judith moved the Illinois Family Court, Judge Witt presiding, for an order terminating George's visitation rights on the ground that he had sexually abused the infant, then three years of age, during a Minnesota visitation on September 7, 1981. Judge Witt denied a petition to

appoint a guardian ad litem for Sarah or to make her a party to the proceeding. See Appendix C-1, p. 74, no. 4.[2]

Following the taking of testimony in the matter, Judge Witt, in an open-end ruling held that "there is no credible evidence that George has ever physically or sexually abused Sarah." His ruling was affirmed by the Illinois Appellate Court on December 19, 1983, on the basis that Judge Witt was in a better position to determine the credibility of witnesses.

In October of 1982, following Judge Witt's ruling of October 20, 1982 and the child's report of additional abuse, a personal injury action against George for the

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[2]The record demonstrates that Mr. Gurewitz, the original guardian ad litem, was discharged on September 2, 1981, prior to the first incident of sexual abuse. Thereafter, Judge Witt refused to appoint a new guardian ad litem to represent the minor plaintiff in the Illinois abuse proceedings.

sexual abuse of the infant on September 7, 1981, and September 6, 1982, was filed in the Minnesota District Court, a court of general jurisdiction,[3] praying for tort damages. Because of the allegation of sexual abuse of the infant, sexual abuse aspects of the matter were referred by the sitting District Court Judge to the Minnesota Juvenile Court, a division of the District Court for attention. The Juvenile Court, on the basis of a petition of the infant's maternal uncle, initiated a statutory dependency and neglect procedure, naming both the father, mother, and the child (through a court appointed guardian ad litem), as parties.

George failed to appear in the tort action and a default judgment was entered against him on December 23, 1982. In January 1983, undisputed evidence of certain improprieties

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[3]See Minn. Stat. 484.01.

of Judge Witt in connection with the relations with George's attorney came to light[4] and the matter was transferred to Judge Emilio Santi of the same court. Judge Santi filed an order on February 23, 1983, staying all Illinois proceedings in favor of the Minnesota Juvenile Court proceedings. His order stated:

> This cause coming on to be heard on all pending matters and the court being advised that there remains pending a certain juvenile proceeding in the courts of Minnesota, it is hereby ordered that all pending matters are continued generally until further notice.

See Appendix C-3, p. 80.

On March 30, 1983, George moved for a vacation of the default judgment and a

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[4]It appears that George's attorney had been counsel for Judge Witt in other matters, and there was evidence of improper contacts with George's attorney. These improprieties are a matter of record pursuant to affidavits filed in the Lake County, Illinois, Circuit Court.

dismissal of both the tort and Juvenile Court actions on the grounds that subject matter jurisdiction was lacking in the Juvenile Court and that Judge Witt's October 20, 1982 findings had a res judicata and collateral estoppel effect on the Minnesota proceedings.

On July 5, 1983, Judge Allen Oleisky, who had heard the motions in his dual capacity as District Court and Juvenile Judge, granted the application for vacation of the default judgment in the tort action, conditioned upon his filing a verified Answer to the Complaint. He denied the motions for the dismissals of the tort action and the Juvenile Court proceeding, stating (Appendix D-1):

> The present case involves allegations of sexual abuse of a minor child within the State of Minnesota, under these circumstances jurisdiction over the subject matter of this type

> of action rests on Minn. Stat. Section 260.111. This statute gives the Juvenile Court original and exclusive jurisdiction over neglected and dependent children within the State of Minnesota.

With respect to the issue of subject matter jurisdiction of the District Court, Judge Oleisky stated (Appendix D-1):

> The Court also has jurisdiction over the subject matter and personal jurisdiction in that the action was instituted as a tort action, Minn. Stat. Section 543.19.

Answering a contention that Judge Witt's order was an Illinois judgment as to which the Minnesota courts were obligated to award full faith and credit, Judge Oleisky stated (Appendix D-1):

> When a child is found to be dependent or neglected within the state, the state is not required to give full faith and credit to the custody decisions of another state. In re Longseth, 282 Minn. 28, 162 N.W.2d 365 (1968).... Defendant argues that the action must be dismissed on the grounds of res judicata and collateral

> estoppel. The minor child plaintiff in this case was not a party to the child abuse hearing in Illinois. The presiding judge in Illinois denied a motion for a guardian ad litem.

See Appendix D-1.

On August 15, 1983, George filed a verified Answer and Counterclaim in the tort action. On February 3, 1984, a new motion by George for dismissal of the Juvenile Court proceeding for lack of subject matter jurisdiction was denied by Judge Peter Albrecht. In his new motion, George contended that "primary jurisdiction" accorded the Illinois court under the Uniform Child Custody Jurisdiction Act (UCCJA) precluded the existence of subject matter jurisdiction in the Minnesota Juvenile Court.

In his February 3, 1984 denial memorandum (Appendix D-2), Judge Albrecht held that the Minnesota Juvenile Court had statutory subject matter jurisdiction under Minn. Stat.

Section 260.111, as had been previously held by Judge Oleisky on July 5, 1983; that the UCCJA was inapplicable because the dependency proceeding was not a "child custody" case as contemplated by the UCCJA, and that even if it were assumed that the UCCJA applied, the Juvenile court still had jurisdiction under the "home state" and "best interest" provision of the Minnesota provisions of the UCCJA.

Judge Albrecht concluded by stating (Appendix D-2):

> Finally... the record before this Court indicates that the Illinois Court has specifically stayed further proceedings in that state until resolution of the Hennepin County proceedings."[5]

On April 25, 1985, the Minnesota Juvenile

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[5]It is unclear whether Judge Albrecht's denial memorandum was brought to the attention of the Cook County Circuit Court. His memorandum was specifically brought to the attention of the Appellate Court in plaintiff's petition for rehearing.

Court, after the completion of a seven-day contested hearing, held on the basis of significant additional evidence that George had sexually abused the infant between September 4 and September 7, 1981, and on September 6, 1982. (Appendix D-3).[6]

The additional evidence included a January 24, 1983 report by the Illinois Department of Child and Family Service that it had concluded on the basis of a "thorough investigation" that Sarah had been sexually abused by George. A videotape interview with the child by a Minneapolis police officer indicated that child abuse had occurred. Records of the child's pediatrician revealed that it was highly questionable that a hymen intact prior to

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[6]Contrary to George's representation to the Illinois Appellate Court, George appeared at the hearing and was represented by counsel throughout.

September 6, 1982, was thereafter intact. Two psychologists, specialists in child sexual abuse cases, after hearing a tape recording of the child's statements and viewing the videotape interview, were of the opinion that sexual abuse had occurred. Dr. Shapiro, the child's psychiatrist testified, on the basis of nine additional interviews with the child, that in his opinion, she had been sexually abused on the dates in question.

A dispositional hearing was set by the Juvenile Court for June 5, 1984, at which George refused to appear. Instead, he submitted a statement in which he advised that he would not participate in any further proceedings in the State of Minnesota or file an appeal.

Based on the findings in the Juvenile Court action, plaintiff filed a motion in the

tort action for summary judgment on the issue of liability. George did not oppose the motion and partial summary judgment on the issue of liability was granted in favor of the infant plaintiff on the issue of liability on April 24, 1985.

Trial was scheduled for June 3, 1985. Although duly notified, George failed to appear. After the court heard evidence as to damages, judgment was entered in favor of the infant and against her father in the sum of $325,000.

The Minnesota tort judgment was registered as a foreign judgment in the Cook County Illinois Circuit Court on April 9, 1986.

On June 24, 1986, George moved the court to set aside the registration on the ground that the Minnesota Juvenile Court, upon whose findings the tort judgment was based, lacked

primary subject matter jurisdiction; that Minnesota had erred in failing to give full faith and credit to the Illinois decision; and that the doctrine of res judicata had precluded the Minnesota Juvenile Court from considering the issue of sexual abuse. The motion was denied on July 24, 1986.

An amended motion to set aside the registration was filed on August 4, 1986, and supplemented by a motion for a change of venue. On September 11, 1986, Sarah filed a response to the amended motion, in which she stated: (pp. 2-3))

> [defendant's] memorandum fails to state any grounds which would or could serve as a defense to plaintiff's constitutional right to seek full faith and credit in the Illinois Courts for the adjudication in the District Court of Hennepin County, Minnesota.

On April 7, 1987, the Cook County, Illinois Court requested the parties to

respond to the following questions:[7]

1. Did defendant appear in the Minnesota tort action: if not, was there proper service. Plaintiff advised that defendant had appeared in the tort action, that the Minnesota Court had personal jurisdiction over him, and that defendant had admitted this in his memorandum. (See Plaintiff's Memorandum filed May 19, 1987, p. 2).

2. In the Minnesota Juvenile and District Court actions, did defendant raise the issue of the full faith and credit of the Illinois Court? Plaintiff answered "yes" and pointed out that defendant had in his Memorandum acknowledged and admitted raising the issue. (Id., p. 2).

3. Is Sarah precluded by the Illinois Judgment in Lake County, on the basis of res

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[7]The questions are set out in Appendix A-4, pp. 47-48. See also Plaintiff's Memorandum filed May 19, 1987.

judicata and/or full faith and credit? Plaintiff answered that the Illinois Family court was not a court of competent authority to render findings which were entitled to full faith and credit or res judicata in a tort proceeding. (Id., pp. 2-3).

4. Did the District Court in Minnesota grant summary judgment regarding liability based on the Minnesota Juvenile Court findings? The plaintiff responded in the affirmative (Id., p. 3) and responded further, as follows:

> ....ancillary to the tort action, a Petition was brought in the Juvenile Division... where... the Minnesota Juvenile Court specifically found it had jurisdiction of the subject matter....The Court specifically rejected defendant's argument of collateral estoppel and res judicata.... Later in the tort proceedings... the Court found that based upon the findings in the dependency action, the issue of liability has been fully adjudicated....Plaintiff would urge that inquiry into the basis

> for the findings of liability by the Minnesota Juvenile Court is beyond the scope of permissible inquiry in these proceedings wherein the issue is whether or not the decree of the Minnesota Court is entitled to full faith and credit.... (Id., pp. 3-4).

Plaintiff further contended:

> Under the doctrine of full faith and credit, the foreign court will not rehear a case on its merits because the judgment is res judicata as to the nature and amount of plaintiff's claim....Defendant [in effect] urges this Court to expand the law of the State of Illinois and the constitutional concepts of Full Faith and Credit to provide an additional defense to the registration of a foreign judgment. (Id., pp. 7-8).

A motion by George, filed on March 18, 1987, for a transfer of venue was denied. On June 4, 1987, the Circuit Court of Cook County denied George's motion to set aside the registration. In the course of its oral opinion the Court pointed out that the full faith and credit clause prevented a

collateral Illinois attack on the validity of the judgment since the issues of lack of subject matter jurisdiction and issue preclusion had been litigated and determined adversely to the defendant in the Minnesota proceedings. In this connection, the Court ruled: (Appendix A-4, p. 48)

> Of course the foundation stone of this case is the claim by the plaintiff Sarah here that this court is without authority to go behind the judgment of the Minnesota Court pursuant to the full faith and credit clause which is Article 4, Section 1 of the Constitution of the United States.

On October 30, 1987, in connection with a motion to supplement this record, the following discussion took place between the Court and Mr. Walker, counsel for defendant: (Report of October 30, 1987 Proceedings, p. 3, line 23 - p. 4, line).

> THE COURT: Mr. Walker, I have read your motion... you have raised the defense that while it

> may be true... that the Minnesota judgment is entitled to full faith and credit, you have nonetheless claimed that the Minnesota Court failed to give full faith and credit to the Illinois judgment. That is your key proposition.
>
> MR. WALKER: That is right... Their judgments should not be given full faith and credit because they failed to give full faith and credit to the Illinois judgment."

The motion to reconsider was denied on November 5, 1987, and on December 4, 1987, defendant filed an appeal from the June 4, 1987, denial of the motion to set aside the registration of the Minnesota judgment.

In her answering brief on the appeal, the minor plaintiff argued (Plaintiff-Appellee's Brief, p. 4) that under the "Full Faith and Credit clause of the United States Constitution (U.S. Const. Art. 4, Sec. 1)... a judgment is afforded the same faith, credit, conclusive effect and obligatory

force in other states as it has by law or usage in the state in which the judgment was taken. [citations]." She also argued that under Minn. Stat. Section 260.111, the Minnesota Juvenile Court had found that it had original and exclusive jurisdiction in a dependency proceeding involving the sexual abuse of a minor in Minnesota so as to negate any question of subject matter jurisdiction, and that: (Plaintiff-Appellee's Brief, pp. 5-6).

> If the full faith and credit clause is to be given the true meaning, the courts of Illinois should recognize all orders and judgments of its sister states, even though such orders or judgments may be inconsistent with Illinois law.

On March 31, 1989, the Illinois Appellate Court set aside the registration of the Minnesota judgment on the following ground:

> that the Illinois decisions were res judicata of the Minnesota Juvenile Court proceeding, and, additionally, that the Minnesota

> Court lacked jurisdiction to enter its judgment because the exercise of its jurisdiction was in contravention of the purposes for which the UCCJA was enacted.

See Appendix A-2, pp. 21-22).

The Illinois Appellate Court held that the Witt decision should have been given full faith and credit in the Minnesota Juvenile Court proceedings. In this respect it held: (Appendix A-2, pp. 22-23).

> We first observe that the full faith and credit clause of the United States Constitution (U.S. Const. art IV, sec. 1) requires an application of res judicata where the parties involved in the matter are the same, or those in privity with them, and the cause of action and the subject matter of both suits are the same [citation]. Here, the Minnesota Juvenile Court apparently believed that the Illinois decisions were not res judicata... because it found there was "significant difference" in the evidence presented to it subsequent to the Illinois decisions.

The Appellate Court acknowledged the rule

that where inconsistent judgments exist, the "full faith and credit clause requires the latest judgment to be controlling", but was apparently under the impression that the judgment which was the subject of registration, was a child custody judgment rather than a tort money judgment. It stated: (Appendix A-2, pp. 26-27):

> We first note that plaintiff's reliance on Sullivan v. Sullivan (1981), 98 Ill. App. 3d 928, 424 N.E.2d 957--for the proposition that where another state fails to give full faith and credit to a judgment of Illinois, Illinois nevertheless is obligated to give full faith and credit to the other state's later judgment--is misplaced under the circumstances here. At issue in Sullivan was the payment of past due support and maintenance obligations. The case before us is a custody matter. Certainly, the custody of children and payment of monies require different considerations....

In a petition for rehearing filed May 11, 1989, the plaintiff pointed out the fact

that the Appellate Court had failed to mention or consider the following record facts pertinent to a review of its full faith and credit treatment of the Minnesota tort judgment:

(1) That the Illinois Family Court had specifically relinquished jurisdiction to the Minnesota Juvenile Court and had stayed proceedings in Illinois for that reason. (Petition for Rehearing, p. 5).

(2) That the Minnesota Juvenile Court had specifically ruled, as against George's claim of lack of subject matter jurisdiction, that it had "original and exclusive" subject jurisdiction; and that in the event Illinois had not stayed proceedings, the "home state" and "best interest" provisions of the UCCJA gave the Minnesota juvenile court priority jurisdiction. (Id., pp. 3-4).

(3) That George's claims of lack of subject matter jurisdiction in the Minnesota juvenile court had been litigated and determined against him. (Id., pp. 3-4).

(4) That the Minnesota juvenile court had specifically ruled that the UCCJA was not applicable because the dependency and neglect proceeding was not a "child custody" proceeding. (Id., p. 4).

The motion for rehearing was denied on May 17, 1989.

The plaintiff then filed a Petition for Leave to Appeal to the Illinois Supreme Court. In her Petition, plaintiff asserted that "in rendering its decision, the appellate court ignored the Full Faith and Credit Clause and the Federal Res Judicata Act implementing it." (Petition for Leave to Appeal, p. 25.)

The Illinois Supreme Court denied the Petition for Leave to Appeal on October 5, 1989.

REASONS FOR GRANTING THE PETITION

I.

The refusal of the Illinois appellate courts to afford full faith and credit to a Minnesota tort judgment directly violates the Full Faith and Credit clause of the Constitution, the plain language of the implementing statute (28 U.S.C., Sec. 1738) and an unbroken line of this Court's cases which stretch back to the dawn of the Republic.

The Full Faith and Credit clause reads as follows:

> Full Faith and Credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other state.

The First Congress promptly adopted implementing legislation requiring that a

state judgment be accorded "such faith and credit" as it would have "by law or usage in the courts of the state" in which it was rendered. See Act of May 26, 1790, c.11, 1 Stat. 122.

The present statute, 28 U.S.C., Section 1738, contains similar language:

> [The] judicial proceedings of any court of any such state, territory or possession [of the United States...] shall have the same full faith and credit in every court within the United States as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

As Wright and Miller have explained:

> "The most familiar application of this statute has long involved enforcement of money judgments. In this area, it has long been accepted that although judgments in one state are not immediately enforceable by execution in another state, all other states are obliged too provide for registration or an independent action on the judgment and to enforce it by the same means of execution as are available for

> local judgments. Not even strong concepts of local policy can be interposed to defeat enforcement.

See Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction, Section 4467.

This basic rule has been firmly established since Mills v. Duryea, 7 Cranch (11 U.S.) 481, 484, 3 L.Ed. 411 (1813). There the judgment creditor had obtained a judgment in the New York state courts and sought to enforce it in the Circuit Court for the District of Columbia. The Court held that since the judgment was conclusive between the parties in New York, it must be conclusive between the parties in the District of Columbia. The Court went on to state that "it remains only then to inquire in every case what is the effect of a judgment in the state where it is rendered."

This principle was reiterated five years later by Chief Justice Marshall in Hampton v.

McConnell, 3 Wheat (16 U.S.) 234, 236-237, 4 L.Ed. 378 (1818), where the Court stated that "the judgment of a state court shall have the same credit, validity, and effect which it had where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others could be pleaded in any other court of the United States." See also Roche v. McDonald, 275 U.S. 449, 48 S.Ct. 142, 72 L.Ed. 365 (1928); Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039 (1908).

Thus, the only issue before the Illinois Appellate Court was whether the plaintiff had a valid money judgment under Minnesota law. There can be no question that the judgment is valid in Minnesota. The Hennepin County District Court is a court of general jurisdiction with unquestioned power to enter a money judgment. See M.S.A. 484.01. The

time for appeal has long ago expired.[8] Therefore, under Minnesota Law, the judgment is conclusive.

II.

The Illinois appellate courts violated the Full Faith and Credit clause by subjecting a Minnesota tort judgment to collateral attack in an Illinois registration proceeding.

As has been noted, the sexual abuse findings of the Minnesota Juvenile Court served as a basis for summary judgment in the tort action on the issue of liability. In vacating the registration of the tort judgment of the Minnesota District Court, the Illinois Appellate Court reexamined the proceedings underlying the tort judgment and

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[8]Under Minnesota law, the defendant has ninety days from the date of entry of judgment to file an appeal. See Rule 104.01, Minnesota Rules of Appellate Procedure.

found that the Minnesota Juvenile Court proceedings were void for lack of subject matter jurisdiction. It then held, without a statement of reasons, that the tort judgment was void because it was founded upon a void Juvenile Court judgment, and that the Full Faith and Credit Clause of the United States did not apply where this was the case.

In so holding, the Appellate Court totally ignored the fact that the District Court judgment was regular on its face and had been rendered by a court of general jurisdiction possessing personal and subject matter jurisdiction in the tort action. Where this is the case, the tort judgment is immune from precisely the type of collateral attack in which the Appellate Court engaged in denying registration.[9] As this Court has

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[9]Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940), rehearing denied, 312 U.S. 712, 61 S. Ct. 548, 85

pointed out, where a judgment has been rendered by a court of competent jurisdiction:[10]

> ...the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or the consistency of the decision or the legal principles on which the judgment is based.

L.Ed. 1113 (1941). It is fundamental that in an action on the judgment the original cause of action cannot be examined on the merits. "[N]o item of defense may be asserted that existed prior to the judgment and which might have been set up in the original proceedings." Indemnity Ins. Co. v. Smoot, 80 U.S. App. D.C. 287, 290, 152 F.2d 667, 670, (D.C. Cir., 1945), cert. denied, 328 U.S. 835, 66 S.Ct. 981, 90 L.Ed. 1611. "The judgment of a court having jurisdiction cannot be collaterally attacked and the question of fact once determined must, as between the same parties, be taken as conclusively established and accorded res judicata effect." Insurance Co. of North America v. Bay, 784 F.2d 869, 876 (8th Cir. 1986). See also Christmas v. Russell, 5 Wall. 290, 72 U.S. 290, 18 L.Ed. 475 (1866).

[10]Milliken v. Meyer, 311 U.S. 457, 462, 61 S.Ct. 339, 85 L.Ed 278 (1940), rehearing denied, 312 U.S. 712, 61 S.Ct. 548, 85 L.Ed. 1143 (1941).

Thus, where the rendering court possesses competence, full faith and credit cannot be denied merely because alleged mistakes of law underlie the judgment[11] or it is based on a prior void judgment.[12]

The failure of the Appellate Court to recognize and apply this principle may well have occurred because of its misperception that the judgment sought to be registered was a child custody judgment rendered by the Minnesota Juvenile Court, rather than a tort money judgment rendered by the Minnesota

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[11]Even if the Minnesota District Court had erred in holding that it was entitled in the summary motion hearing to rely on the Juvenile Court findings of sexual abuse. any error of law was not a defense to the Illinois registration. If a court has jurisdiction, full faith and credit cannot be denied merely because mistakes of law may underlie the judgment. Fauntleroy v. Lum, 210 U.S. 230, 237, 28 S.Ct., 641, 52 L.Ed. 1039 (1908).

[12]See, for example, MacVey v. MacVey, 98 A.2d 794, 795 (D.C. Mun. App., 1953).

District Court. In attempting to distinguish the situation in Sullivan v. Sullivan, (1981) 98 Ill. App. 3d 928, 424 N.E.2d 957, an Illinois decision which allowed registration, from the situation before it, the Appellate Court stated: (Appendix A-4, p. 27).

> The case before us is a custody matter. Certainly the custody of children and payment of monies require different consideration." (emphasis supplied)

Although the record was crystal clear that the tort judgment had been rendered by a Minnesota court of competent jurisdiction, there was a total failure of the Appellate Court to take note of this fact or to give it appropriate full faith and credit recognition. Although the defendant has not disputed the fact, the Illinois Appellate Court has failed to take cognizance of the inapplicability of collateral attack even though the Court's omission was called to its

attention by a motion for a rehearing.

III.

An alleged "erroneous exercise of subject matter jurisdiction" neither rendered the Juvenile Court proceedings void nor excused the failure of the Illinois Appellate Court to give full faith and credit to a Minnesota tort judgment.

As has been noted, the regularity of the tort judgment on its face and the undisputed general jurisdiction of the rendering court debarred the defendant from collaterally attacking the facts underlying the judgment. Nonetheless, the Illinois Appellate Court undertook to inquire whether the Juvenile Court had possessed subject matter jurisdiction. It then found that the proceedings of the Juvenile Court were void because the Juvenile Court had erroneously exercised subject matter jurisdiction in

failing to yield concurrent subject matter jurisdiction to the primary jurisdiction of the Illinois courts. (Appendix A-4, pp. 26-31).

In doing so, the Illinois Appellate Court overlooked the well settled principle that an erroneous exercise of judgment does not render a court's judgment void. At best, it renders the judgment voidable. Absent direct attack, it remains in effect. An error in the exercise of jurisdiction is distinguishable from a lack of jurisdiction. This Court, as well as the lower Federal courts, have repeatedly held that a court has the power to determine its own jurisdiction and an error in the determination will not render the judgment void. Underwriters Nat. Assur. v. N.C. Life & Acc. Guar. Assn., 455 U.S. 691, 708, 102 S. Ct. 1357, 71 L.Ed. 2d 558 (1982); Stoll v. Gottlieb, 305 U.S. 165, 59

S.Ct. 134, 83 L.Ed. 104 (1938); Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 649 (1st Cir. 1972); Coleman v. Court of Appeals, 550 F. Supp 681, 684 (W.D. Okla. 1980); Hobbs v. U.S. Office of Personnel, 485 F. Supp. 456, 458 (M.D. Fla. 1980).

A fact of which the Illinois Appellate Court failed to take note, and which would have totally destroyed any possible validity to a defense of lack of subject matter jurisdiction, was the "original and exclusive" jurisdiction conferred in such cases upon the Minnesota juvenile court under Sec. 260.111 of the Minnesota Statutes. This fact was specifically mentioned in Judge Oleisky's memorandum of July 5, 1983. Judge Lasser of the Cook County Circuit Court, in rejecting defendant's motion to set aside the registration of the tort judgment, drew to

the attention of the defendant that the defendant was not contesting the fact that the Juvenile Court had original and exclusive subject matter jurisdiction over the proceedings.

This Court has expressly held that even if there has been an error in interpreting a statutory grant of jurisdiction, the effect is not to void a judgment of a court acting pursuant to the statute. Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 376-377, 60 S.Ct. 317, 319-20, 84 L.Ed. 329 (1940).

As is obvious, the undisputed fact that the Minnesota Juvenile Court had subject matter jurisdiction on a statutory original and exclusive basis should have chilled any defense that the judgment of the Juvenile Court was void for lack of subject matter jurisdiction. Despite the controlling effect

of this fact, it was completely ignored by the Illinois Appellate Court in arriving at the decision. The omission was specifically called to the Court's attention by the infant's motion for rehearing. The Court's original failure to consider the matter of the Minnesota Juvenile Court's original and exclusive jurisdiction and its subsequent refusal to reconsider the matter represents fundamental error adversely affecting the infant's full faith and credit rights.

Another decisive factor which, if noted and considered would have demolished its finding that the failure of the Juvenile Court to yield to the Illinois courts deprived it of jurisdiction lay in the fact that the Illinois court had specifically relinquished jurisdiction to the Minnesota Juvenile court. Not noted or acknowledged by the Illinois court was the fact that the

Illinois court, by order filed on February 23, 1983, had stayed all pending Illinois proceedings in favor of the Minnesota Juvenile Court proceedings. The provisions of the UCCJA upon which the Illinois Appellate Court relied to support its lack of jurisdiction holding expressly authorized the Minnesota courts to take subject matter jurisdiction under such circumstances. See Ill. Stat. Ch. 40, par. 2108(a).

Since the stay of proceedings in Illinois was in the record before the Appellate Court, it is difficult to understand why it should have been overlooked, except that it was totally inconsistent with the "erroneous exercise of jurisdiction" basis on which the Appellate Court relied in holding that a lack of subject matter jurisdiction rendered the Juvenile Court proceedings void.

The fact that Illinois had relinquished

jurisdiction, and its significance in destroying the basis for the court's "erroneous exercise of jurisdiction" holding, was specifically brought to the attention of the court of appeals in Petitioner's motion for rehearing. The denial of Petitioner's request for rehearing, coupled with the failure of the Appellate Court to originally note and apply the fact of the relinquishment of jurisdiction, resulted in an impairment of the infant's full faith and credit rights since it left intact the basis for the holding that the Juvenile Court judgment was void for lack of subject matter jurisdiction, resulting, according to the Illinois Court of appeals in nullification of the basis for her tort judgment.

IV.

The Illinois Appellate Court violated Petitioner's Full Faith and Credit rights by

refusing to acknowledge that the issue of subject matter jurisdiction had been decided adversely to the judgment debtor in the Minnesota proceedings.

As has been noted, the issue of the subject matter jurisdiction of the Minnesota Juvenile Court had been raised and determined adversely to the judgment debtor in the Minnesota proceedings. The combined decision of the Minnesota Juvenile and District Courts to that effect was in the record before the Illinois Appellate Court. Despite the regularity of the tort judgment on its face and the general jurisdiction of the Minnesota District Court to render it, the Illinois Appellate Court undertook to reexamine the issue and, upon a reexamination of the issue, held that a lack of subject matter jurisdiction voided the Minnesota Juvenile Court judgment which, in turn,

voided the tort judgment.

In so doing, the Illinois Court overlooked this Court's well settled rule in full faith and credit situations, that the courts of a sister state cannot subject a foreign judgment to a readjudication of a jurisdictional issue where the issue has been litigated and determined adversely to the judgment debtor in the foreign state. Durfee v. Duke, 375 U.S. 106, 112-113, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963); Coe v. Coe, 334 U.S. 378, 68 S.Ct. 1094, 92 L.Ed. 1451 (1948). As this Court has stated: "...Where one voluntarily appears, presents his case and is fully heard...[he is] thereafter concluded on the question of subject matter jurisdiction by the determination of the court." Durfee v. Duke, 375 U.S. at 111-112, 84 S.Ct. at 245, 11 L.Ed. 2d at 1911. See also Davis v. Davis, 305 U.S. 32, 59 S. Ct.

3, 83 L.Ed. 32 (1938). The judgment debtor had refused to participate in the summary judgment proceedings following the entry of the Juvenile Court dependency order. There is no justification to deny full faith and credit to a judgment "because a party with notice of the proceedings chose to stay away ..." DiMauro v. Pania, 492 F. Supp. 1051, 1063, (D. Conn. 1979), aff'd 614 F.2d 1286 (2d Cir. 1979).

The failure of the Illinois Appellate Court to acknowledge and accord respect to this settled principle of full faith and credit law was specifically presented to the Illinois Appellate Court on motion for rehearing. Its failure to originally acknowledge the effect of prior adverse litigation and its refusal to reconsider the matter constitute a fundamental violation of the infant's full faith and credit rights.

V.

The failure of the Minnesota courts to accord issue preclusion to the Illinois findings was not a legitimate defense to Illinois recordation of the tort judgment.

The defendant had contended in both the Minnesota Juvenile and District court proceedings that Judge Witt's Illinois findings with respect to sexual abuse were controlling under res judicata and collateral estoppel principles. Both Minnesota courts had rejected this contention, citing the fact that Minnesota law precluded the application of issue preclusion since the infant had not been made a party to the Illinois proceedings.[13] The Juvenile Court, after a

[13]Since defendant failed to take a direct appeal to the Minnesota Court of Appeals, he may not now argue that Judge Oleisky's ruling on res judicata was in error. See Marin v. Augedahl, 247 U.S. 142, 38 S.Ct. 452, 62 L.Ed. 1038 (1918). However, it must be pointed out that Judge

comprehensive evidentiary hearing, had further rejected the contention on the basis of significant additional evidence of sexual abuse of the infant.

In addition, as pointed out by Judge Oleisky in his July 5, 1983 memorandum order, the appointment of a fake "psychiatrist" as an expert raised a question as to whether the issue of sexual abuse had been "fairly and fully" tried by Judge Witt.

In complete disregard of the full faith and credit rule which requires a subsequent court to award controlling effect to the law of the state in which the judgment was

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Oleisky's ruling is in accord with the great weight of authority which recognizes that privity does not extend to the parent-child relationship and the child is not bound by the results of a lawsuit involving a parent unless he or she is made a party. See 1 B.J. Moore, Moore's Federal Practice 0.411[11] (2d ed. 1974) cited with approval in Johnson v. Hunter, (Minn., November 10, 1989); see also Fay v. South Colonie Central School District, 802 F.2d 21, 30, fn. 1 (2d Cir. 1986).

rendered[14], the Appellate Court held that the infant was bound under Illinois law by the findings in the Witt proceeding even though she had not been named as a party or allowed a guardian ad litem to protect her interests.

Again, in complete disregard of the full faith and credit rule precluding the reexamination of evidence upon which the legal ruling of the foreign state was made,[15] the Appellate Court undertook to weigh and compare the evidence introduced in both proceedings. In the absence of the trial record in the Juvenile Court proceedings, th Appellate Court utilized only the Findings made by Judge Albrecht. It then held, contrary to Judge Albrecht's Findings that the evidence in both cases was virtually

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[14]See, e.g., Titus v. Wallick, 306 U.S. 282, 59 S.Ct. 557, 83 L.Ed. 653 (1939).

[15]See, e.g., Marin v. Augedahl, 247 U.S. 142, 38 S.Ct. 452, 62 L.Ed. 1038 (1918).

identical.

The Appellate Court apparently read only a single finding referable to Dr. Shapiro's testimony, ignoring the nature of the evidence reflected in numerous other findings. Normally, the conclusion of the Illinois Appellate Court as to the quality and quantity of the evidence in the two hearings would be immaterial in view of the rule precluding collateral attack. Nonetheless, the assertion by the Illinois Appellate Court that Judge Albrecht's findings were essentially barren of additional significant evidence invites inquiry as to its fairness in examining only the finding relating to Dr. Shapiro's testimony.

In the Witt hearings, as conceded by the Illinois Appellate Court, the only "expert" supporting Judge Witt's findings was the

fake "psychiatrist" whom he had appointed.[16] This "expert" had been called by the father. The only genuine "expert" was one called by the mother in the form of Dr. Stanley Shapiro, a reputable psychiatrist experienced in child abuse cases.

Against this evidence, with the facilities available to it, the Juvenile Court had before it, among other things, a taped interview with the infant regarding her sexual abuse, a report of an investigation by the Family and Children's Service Department of the State of Illinois, a videotape study of the child's reactions during an interview by a police expert in sexual abuse cases, the testimony of two child psychologists who specialized in child abuse cases, and the

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[16]Judge Witt's "expert" was actually an unlicensed psychologist who practiced "marriage counseling." (See Transcript of proceedings, June 10, 1982, pp. 00468-00469).

testimony of Dr. Shapiro as to the results of nine additional interviews with the child subsequent to the Witt hearings.

VI.

Even if the Illinois Appellate Court had been correct in holding that the Minnesota courts had erred in refusing to accord res judicata or collateral estoppel effect to the Witt finding, such an error was not an appropriate basis under full faith and credit rules for setting aside the Illinois registration of the Minnesota tort judgment.

This Court has settled the rule that full faith and credit must be given to the "last in time" of inconsistent judgments by its holding that the last in time judgment is deemed to be a res judicata holding that the prior judgment was not a preclusive one. Treinies v. Sunshine Mining Co., 308 U.S. 66, 60 S.Ct. 44, 84 L.Ed. 85 (1939). It has been

explained:[17]

> When two inconsistent judgments exist it is tempting for a court to reexamine the merits of the litigant's dispute and choose the result it likes best. There are important reasons to avoid this temptation...Second, the most recent court to decide the matter may have considered and requested the operation of the prior judgment as res judicata and its decision should be treated as res judicata on the preclusive effect of the prior judgment....Therefore, even when we think that the most recent judgment is wrong, we still give it res judicata effect so that finality is achieved and the parties are encouraged to appeal an inconsistent judgment directly rather than attack it collaterally before another court."

The facts in Blair v. Supreme Court of the State of Wyoming, 671 F.2d 389 (10th Cir. 1982), are closely analogous to those in the instant case. In that case, the parental rights of a father to custody of the child

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[17]Robi v. Five Platters, Inc., 838 F.2d 318, 322-323 (9th Cir. 1988).

had been determined in his favor in a Colorado proceeding. In a subsequent proceeding in the Wyoming courts to terminate his parental rights, he had contended, unsuccessfully, that the Wyoming court lacked subject matter jurisdiction because of the previous favorable Colorado decree.

In holding that Wyoming's refusal to accord preclusive effect to the Colorado decree could not be challenged in a federal court proceeding in which the father challenged the constitutional right of the Wyoming court to disregard the Colorado finding, the United States Court of Appeals stated:[18]

> [Blair] contends the Wyoming court did not have subject matter jurisdiction to terminate his parental rights because the custody of his child had previously been determined by a

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[18] Id., at 671 F.2d 391.

> Colorado court. (citation). Blair's pleadings show that he raised this jurisdictional claim in the Wyoming trial court and that it was decided against him. Consequently, he is precluded from relitigating this issue in a federal court. (citations). The same is true of Blair's contention that the finding of non-support is erroneous under the evidence.

The Illinois Appellate Court recognized that the "last-in-time" rule would normally have required it to give full faith and credit to the tort judgment. However, it asserted that it was entitled to limit the application of full faith and credit where a prior decision involved child custody. It reasoned that in so doing it was furthering the purposes of not relitigating child custody proceedings in a different state.

In so holding, it ignored that it was comparing apples and oranges since the tort judgment involved a money judgment for personal injury sustained by the infant and

did not involve a dispute as to the custody of the child. More important, the Juvenile Court proceeding was a dependency and neglect proceeding focusing upon the personal protection of a child from abuse and did not interfere in any way with the custody granted to the mother by the Illinois family court. It must also be pointed out that the Appellate Court's fear of relitigation was unfounded since the Illinois family court had relinquished jurisdiction, and the Juvenile Court possessed original and exclusive jurisdiction in the matter. In the final analysis, the Illinois Appellate Court was simply refusing to face the fact that it had no right to collaterally attack the underlying basis for the judgment of a court of competent jurisdiction.

CONCLUSION

It is submitted that the petitioner has

amply demonstrated the violation of her full faith and credit rights under the U.S. Constitution by the Illinois Appellate Court's vacation of the Illinois registration of her Minnesota tort money judgment.

It is clear that her rights were violated by permitting an improper collateral attack upon the merits of the judgment, particularly where controlling full faith and credit factors were disregarded, although they were part of the record and called to the attention of the Illinois Appellate Court.

Petitioner respectfully requests that the Court grant her petition for writ of certiorari.

Dated: January 3, 1990

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